Supreme Court, U.S.
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No. 06-632

In The

Supreme Court of the United States

JOHN J. O'BRIEN, III, TRUSTEE ON BEHALF OF MINOR-PLAINTIFFS; JOHN JOSEPH O'BRIEN, IV; DANIELLE O'BRIEN; BRIANA O'BRIEN; SIMONE O'BRIEN, and JOSEPHINE O'BRIEN, MOTHER AND PARENT ON BEHALF OF MINOR-PLAINTIFFS,

Petitioners,

vs.

VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a litigant levy and seize the funds of non-party children of the plaintiffs without recourse by plaintiffs?

2. May a litigant seize funds in excess of its Judgment amount without responsibility?

3. Do non-parties have remedies for the wrongful seizure of their funds?

4. Have non-parties fundamental rights been violated by wrongful seizure of their funds?

5. Is an Appellate Court in error in altering facts to fit its opinion?

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PETITION FOR WRIT OF CERTIORARI

John and Josephine O'Brien, plaintiffs, parents and natural guardians of John J. O'Brien, IV, Danielle O'Brien, Briana O'Brien and Simone O'Brien respectfully Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is reproduced as Appendix A. The opinions of the United States District Court for the Eastern District of Pennsylvania are reproduced as Appendices B and C.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit was entered on April 6, 2006. A Petition for Rehearing En Banc was denied on August 10, 2006. (Appendix D) This Petition was filed within ninety (90) days of that date. The Court has jurisdiction to review this Judgment of the Court of Appeals under 28 U.S.C.A. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fourth Amendment to the U.S. Constitution provides that: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated."

2. Fair Debt Collection Practices Act, 15 U.S.C. Section 1692-1692o.

STATEMENT OF THE CASE

This litigation is by lawsuits of John J. O'Brien, III and of Josephine O'Brien in separate actions in the U.S. District Court for the Eastern District of Pennsylvania in an effort to recover the bank accounts of their children seized in Chester County Pennsylvania litigation as of March 13, 2002.

The plaintiffs efforts to recover their children's assets was dismissed by the U.S. District Court and an appeal ensued. In the U.S. Court of Appeals, the appeal was referred to the Mediation Program of the Appeals Court under the direction of Joseph A. Torregrossa, Esquire.

Actually, two (2) cases were cast into that Mediation Program. All of its correspondence contained the following caption:

> *Josephine O'Brien, et al. vs. Crossroads*, No. 04-4440
>
> *John J. O'Brien, III, et al. vs. Crossroads*, No. 04-4278

Considerable correspondence took place by the Court beginning with March 10, 2005. The said correspondence written by Heather Gray Torres of the Court disclosed that the Court was attempting to locate the missing bank accounts.

Notwithstanding the Court's efforts as of April 6, 2005, Nina M. Bloemaker, Financial Center Manager of

Montgomery County branch of Wachovia Bank forwarded a letter "To Whom It May Concern" in which it advised of six (6) accounts being closed out during April and May of 2002. Surprisingly thereafter, nevertheless, a letter bearing the date of May 17, 2005 by Heather Gray Torres disclosed that on May 11, 2005 Wachovia Bank located the children's bank accounts in the Montgomery County branch which at the time totaled two thousand four hundred seventy six dollars and twenty-two cents ($2,476.22).

Interestingly, the children's funds were seized in Chester County but later found in the bank's Montgomery County branch. The schools petition of Judge Gavin for an Order giving the sheriff the right to break and to enter the premises of the plaintiffs to seize personal property was completely ignored by the Court. The schools violation of the Fair Debt Collection Practices Act, 15 U.S.C. Sections 1692-1692o (1989) was reversed together with all the unpleasant and unlawful acts related to the unconstitutional seizures.

The Court of Appeals in its opinion (Appendix A) by conclusive error in altering the facts contrary to otherwise compelling proof prevented stipulation requested by the Court.

SUMMARY OF ARGUMENT

There is no justification for the seizure of the bank accounts of the plaintiffs' children, and the U.S. District Court was wrong in dismissing the plaintiffs' efforts to recover those bank accounts. And the Court of Appeals

established th[illegible]istrict Court's error by locating those bank accounts of the children and making them available.

However, the Court of Appeals committed blatant error by an abusive and senseless interpretation of the facts by an out-of-context conclusion that the O'Briens conceded that the said bank accounts had not been seized, all of which was conclusive error overwhelmed by abundant proof to the contrary. The Court's error was compounded by a request by Court representative to stipulate to dismiss the lawsuits by the plaintiffs when in addition it was disclosed that the defendant-school continued its wrongdoing by seizing a sum of money on account in the bank in excess of its judgment.

Heather Gray Torres of the Court of Appeals wrote again as of May 23, 2005 to forward stipulations to dismiss the two (2) cases by the plaintiff-parents. In reply as of May 24, 2005 agreement was expressed subject to verification of the presence of the subject bank accounts by meeting with the bank representative. Unfortunately, however a meeting with the bank manager, Ms. Nina M. Bloemaker, disclosed a seizure by counsel for Crossroads of the sum of six hundred sixty one dollars and forty-four cents ($661.44) which was in excess of the judgment of the school. Upon the bank disclosure it was decided not to stipulate to a falsehood. Nevertheless, appreciation was properly expressed for the exceptional accomplishment of Ms. Torres and the mediation program of the Court.

ARGUMENT

Here it is a falsehood for the Court to say that "The O'Briens concede in their Brief that the children's bank

accounts had never been seized." (Appellants' Brief at 5) Rather a correct and intelligent reading the brief is:

> 'It appeared that non-litigant bank accounts had never been seized by Crossroads by virtue of a questionable prothonotary's judgment and denial by Judge Gavin of a motion to vacate an unlawful seizure did not take place and the schools efforts to petition Judge Gavin for an Order giving the sheriff the right to break and to enter the premises of the plaintiffs to seize personal property was overlooked. The schools violation of *Fair Debt Collection Practices Act*, 15 U.S.C. Section 1692-1692o (1989) was reversed together with all the unpleasant and unlawful acts related to the unconstitutional seizures.'

Thus, it is a certainty that the Court extracted its false conclusions from that which is completely set forth above.

Initially, at page three (3) of Appellants' Brief the Court failed or deliberately did not observe:

> 'This litigation was initiated by an unlawful levy and attachment was of March 13, 2002 upon the bank accounts, of children, non-litigants, John Joseph O'Brien, IV, Danielle O'Brien, Briana O'Brien and Simone O'Brien.

And again the Court was asked to observe a second time; at page eleven (11) of Appellants' Brief it reads: "On March 13, 2002, the Crossroads School had the sheriff of Chester County issue a Writ of Execution and Attached upon First Union Bank to levy and attach the assets of non-parties, the children of John J. O'Brien, III and Josephine O'Brien."

And once again at page sixteen (16) of the Appellants' Brief, in the Complaint attached, it reads: "In violation of Title 15 Section 1692, *Fair Debt Collection Practices Act*, the defendant as of March 13, 2002 caused the sheriff of Chester County without lawful notice and in non-compliance with appropriate procedural rules to issue a Writ of Execution and Attachment upon First Union Bank to levy and to attach the bank accounts of the non-litigant minor plaintiffs in violation of their due process rights."

Moreover it is wrong to assert that "The O'Briens do not challenge the District Court's *Rooker-Feldman* analysis. The Court was respectfully asked to compare levy, attachment and seizure of non-party children's assets with that which the U.S. Court of Appeals considered as *not* subject to the *Rooker-Feldman* doctrine in the case of *Parkview Associates Partnership vs. City of Lebanon*, 225 F.3d 321 (3rd Cir. 2000). Therein the Court of Appeals by Judge Sloveter held that *Rooker-Feldman* doctrine did not bar federal district court from considering personal care home's suit challenging of zoning permit as violative of federal and state anti-discrimination statutes, even though state court had affirmed denial of permits' home in that it had not presented disability-based discrimination claims to state courts, and federal courts would not have had to review state courts' determination that denial was supported by substantial evidence in the record and thus no bar to federal court consideration.

In addition, the U.S. Court of Appeals for the Third (3rd) Circuit in the case of *Desi's Pizza, Inc. vs. City of Wilkes-Barre*, 321 F.3d 411 (3rd Cir. 2003) in state court proceedings Desi's Pizza was closed by the state court for one (1) year as a nuisance; the federal district court held that the *Rooker-Feldman* doctrine precludes federal

district court's jurisdiction over claims that were actually litigated or inextricably intertwined with state court adjudication. Here, nevertheless, the Court of Appeals found that Desi's Pizza had a certain property interest that is constitutionally protected for purposes of substantive due process. Such property interest is not protected by state law but rather depends on whether that property interest is fundamental under the United States Constitution. (U.S.C.A. Constitution Amendment Four (4)).

Certainly, the children similar to Desi's Pizza had a protected property interest in their respective bank accounts. Moreover, the children were not litigants in any sense. Somewhere in this United States, there must be some remedy by which non-litigants can recover unlawfully seized property.

As of July 13, 2003, the U.S. District Court for the Eastern District of Pennsylvania in the case of *Associates in Obstetrics Gynecology vs. Upper Merion Township*, 270 F.Supp.2d 633 (E.D.Pa. 2003), by Judge Baylson determined that *Rooker-Feldman* did not preclude claims asserted by the plaintiff. Relying upon *Parkview*, supra, and *Desi's Pizza*, supra, it was decided that substantive due process rights and equal protection rights were concepts viable in a federal lawsuit that had not been adjudicated in extensive state court litigation. Which underlines the fact that the plaintiff-children, were, in addition, at no time engaged in litigation of any kind.

John J. O'Brien, III and Josephine O'Brien filed lawsuits separately as previously stated in an effort to recover the assets of their children, non-litigants. The assets were seized by the Crossroads School. Upon appeal to the Third Circuit Court of Appeals, the litigation was

referred to the Court mediation program. And behold the Court found the children's bank accounts in Montgomery County branch of Wachovia Bank although actually seized at Chester County branch of that Bank.

Upon the foregoing lawsuits the cases were before the District Court and dismissed by that Court. Repetitive Briefs were filed upon appeal under each caption in accordance with the direction of the Court of Appeals. The Court then issued an opinion in which it asserted that seizure never occurred based on an alleged admission by the Appellants. The Court took a statement out of context and ignored the proof otherwise presented for its consideration.

With respect to the Court's false conclusion concerning the O'Briens purported concession of no seizure of children's bank accounts, it is appropriate initially at page three (3) of Appellants' Brief to observe that the Court failed or deliberately did not observe:

> This litigation was initiated by an unlawful levy and attachment as of March 13, 2002 upon the bank accounts, of children, non-litigants, John Joseph O'Brien, IV, Danielle O'Brien, Briana O'Brien and Simone O'Brien.

Again the Court was asked to observe for a second time, at page eleven (11) of Appellants' Brief it reads: "On March 13, 2002, the Crossroads School had the sheriff of Chester County issue a Writ of Execution and Attachment upon First Union Bank to levy and attach the assets of non-parties, the children of John J. O'Brien, III and Josephine O'Brien."

Once again at page sixteen (16) of the Appellants' Brief, in the Complaint attached, it reads: "In violation of

the Title 15 Section 1692, *Fair Debt Collection Practices Act*, the defendant as of March 13, 2002 caused the sheriff of Chester County without lawful notice and in non-compliance with appropriate procedural rules to issue a Writ of Execution and Attachment upon First Union Bank to levy and to attach the bank accounts of the non-litigant minor plaintiffs in violation of their due process rights."

REASONS FOR GRANTING THE PETITION

On March 13, 2002, as previously and properly said, the Crossroads School had the sheriff of Chester County issue a Writ of Execution and Attachment upon First Union Bank to levy and attach the assets of non-parties, the children of John J. O'Brien, III and Josephine O'Brien.

The defendant-school in that attachment wrongfully failed to comply with Rule of Civil Procedure 42 Pa. C.S.A. Section 3232 in that the writ of execution was not received by the plaintiffs at the time that the First Union Bank was served with the levy and attachment on March 13, 2002. The cancelled postage upon the envelope addressed to the plaintiff bears the date of March 20, 2002. Thus, required notice to plaintiffs was not received until after March 20, 2002. Moreover, the levy and attachment of assets of non-parties to litigation and eventual seizure of those assets is in glaring violation of the basic law of the land; section one (1) of the Fourth (4th) Amendment to the U.S. Constitution.

In addition, the plaintiffs did not receive the Notice that is required under the Pennsylvania statute, 42 Pa. C.S.A. Section 3252 at the time of the bank attachment nor did they receive a summary of exemptions to which

the statute refers until a considerable time after the bank attachment. The sheriff's papers do not show that the interrogatories are in the form required by 42 Pa. C.S.A. Section 3253. The interrogatories were not served upon the branch of First Union Bank located at 43 East Main Street, Norristown, PA 19401.

Attachment of funds in trust having taken place upon bank accounts of John Joseph O'Brien, IV, thirteen (13) years of age; upon assets of Danielle O'Brien, eleven (11) years of age; upon assets of Briana O'Brien, nine (9) years of age; upon assets of Simone O'Brien, five (5) years of age; none of the children are defendants. In all, the garnishee-bank charged each party subject to levy thirty-one ($31.00) dollars; a total of one hundred & twenty-four ($124.00) dollars.

The judgment through which attachment had been obtained was untimely and it is a judgment by the prothonotary of Chester County and not by the Court, notwithstanding the presence of timely post-trial motions outstanding for seven (7) months.

Whereupon, counsel for the children filed a Motion to Vacate the wrongful levy. The Chester County Court with authority over the Sheriff and no authority over the children denied the motion to vacate the wrongful levy by the Order of Judge Thomas G. Gavin of May 6, 2002.

The defendant-school conducts its business in violation of the statutory law of Pennsylvania in that it deliberately contends through its personnel that it is not responsible for the fulfillment of the mandated law to which the school deliberately does not abide. That includes the law related to *Psychological Services, 24 P.S. Section 9-973-1* and *Visual Services, 24 P.S. Section 973.2*. The

foregoing services by virtue of the direction of the General Assembly of the Commonwealth of Pennsylvania are to be made available to *all school children* in the Commonwealth of Pennsylvania. The defendant-school through its school director, Jennifer Cordivari, testified at the time of trial (June 7, 2001) under oath, that the school did not conform to those laws. In violation of the law, specifically designed for the benefit and care of all school children, the school's license should be suspended and the school should be closed.

Procedural Rule 227.4 by which the defendant-school wrongfully obtained judgment is unconstitutional in that it usurps the function and the authority of a trial judge to grant or deny judgment. In the constitution of Pennsylvania there is no authority granted to prothonotaries that they are learned in the law and with the knowledge to rule upon post-trial motions in order to grant or deny motions concerned with and contained in law. The function of prothonotaries are described by Article 5 Section 15 of the Pennsylvania Constitution schedules to "maintain and be responsible for records, books and dockets."

Although the plaintiffs are appreciative for the return of the children's assets, the plaintiffs seek punitive damages and recovery of fifty thousand ($50,000.00) dollars they paid in tuition and charges together with interest and costs for the period of four (4) years that their son wasted in the first grade level of defendant school. In addition, the District Court was in error when it seized upon the subject of *Rooker-Feldman* to defeat the claims of the parent-plaintiffs and the District Court in that respect compounded its error.

It is wrong to assert that "the O'Briens do not challenge the District Court's *Rooker-Feldman* analysis." The Court was respectfully asked to compare levy, attachment and seizure of non-party children's assets with that which the U.S. Court of Appeals considered as *not* subject to the *Rooker-Feldman* doctrine in the case of *Parkview Associates Partnership vs. City of Lebanon*, 225 F.3d 321 (3rd Cir. 2000). Therein the Court of Appeals by Judge Sloveter held that *Rooker-Feldman* doctrine did not bar the federal district court from considering personal care home's suit challenging of zoning permit as violation of federal and state anti-discrimination statutes, even though state court had affirmed denial of home's permit in that it had not presented disability-based discrimination claims of state courts, and federal courts would not have had to review state court's determination that denial was supported by substantial evidence in the record and the District Court was correct in that respect.

In addition, the U.S. Court of Appeals for the Third (3rd) Circuit in the case of *Desi's Pizza, Inc. vs. City of Wilkes-Barre*, 321 F.3d 411 (3rd Cir. 2003), in state court proceedings, Desi's Pizza was closed by the state court for one (1) year as a nuisance; the federal district court held that the *Rooker-Feldman* doctrine precludes federal district Court's jurisdiction over claims that were actually litigated or inextricably intertwined with state court adjudication. Here, nevertheless, the Court of Appeals found that Desi's Pizza had a certain property interest that is constitutionally protected for purposes of substantive due process. Such property interest is not protected by state law but rather depends on whether that property interest is fundamental under the United States Constitution. (U.S.C.A. Constitution Amendment Fourteen (14)).

Certainly, the children similar to Desi's Pizza had a protected property interest in their respective bank accounts. Moreover, the children were not litigants in any sense. Somewhere in this United States there must be some remedy by which non-litigants can recover unlawfully seized property.

And as of July 13, 2003, the U.S. District Court for the Eastern District of Pennsylvania in the case of *Associates in Obstetrics and Gynecology vs. Upper Merion Township,* 270 F.Supp.2d 633 (E.D.Pa. 2003), by Judge Baylson determined that *Rooker-Feldman* did not preclude claims asserted by the plaintiff. Relying upon *Parkview*, supra, and *Desi's Pizza*, supra, it was decided that substantive due process rights and equal protection rights were concepts viable in federal lawsuit that had not been adjudicated in extensive state court litigation. Which underlines the fact that the plaintiff-children, were, in addition, at no time engaged in litigation of any kind.

CONCLUSION

On the basis of all of the extraordinary sinister activity related to each case, John J. O'Brien, III in one and Josephine in the other, the plaintiffs ask the Court to consider punitive damages in that the activity of the school was deliberate and unlawful in its seizure and wrongfully intended in obtaining confirmation by the Chester County Court of Common Pleas which the Appellate Court has put aside in restoring the said bank accounts. All of the foregoing is an egregious and shameful example of violation of the fundamental law of our society and culture. We do not condone under any constitutional

exception the seizure of assets of innocent individuals and thereafter obtain Court confirmation thereof. Because of this lawlessness, the plaintiffs jointly ask the Court to impose costs, punitive damages, attorney fees and recovery of the fifty thousand ($50,000.00) dollars paid to the School in tuition and charges while their son languished in the first grade level for a period of four (4) years. And Judge Gavin's Order to break and enter plaintiffs' premises actually took place; additional intentional misconduct motivated by the school.

And certainly with the illustrations concerning *Rooker-Feldman* and the Illustrations concerning the Court's false conclusion concerning seizure of the said bank accounts, the Court's conclusions are in error that warrant plaintiffs' requested remedies.

Respectfully submitted,

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

No. 04-4278

JOHN J. O'BRIEN, III, TRUSTEE ON BEHALF OF MINOR-PLAINTIFFS; JOHN JOSEPH O'BRIEN, IV; DANIELLE O'BRIEN; BRIANA O'BRIEN; SIMONE O'BRIEN,

Appellants

v.

VALLEY FORGE SPECIALIZED EDUCATION SERVICES d/b/a THE CROSSROADS SCHOOL
(D.C. Civil No. 03-cv-03984)

No. 04-4440

JOSEPHINE O'BRIEN, MOTHER AND PARENT ON BEHALF OF MINOR-PLAINTIFFS, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN AND JOHN JOSEPH O'BRIEN, IV,

Appellant

v.

VALLEY FORGE SPECIALIZED SERVICES CORPORATION doing business as THE CROSSROADS SCHOOL
(D.C. Civil No. 03-cv-05695)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
District Judge: The Honorable R. Barclay Surrick

Submitted Under Third Circuit LAR 34.1(a)
March 30, 2006

Before McKEE, BARRY and VAN ANTWERPEN,
Circuit Judges

(Opinion Filed: April 6, 2006)

OPINION

BARRY, *Circuit Judge*

Appellants John J. O'Brien, III, and Josephine O'Brien, through their counsel John J. O'Brien, Jr., brought separate suits in the United States District Court for the Eastern District of Pennsylvania on behalf of their minor children, Simone, Briana, Danielle, and John Joseph ("J.J."), against Valley Forge Specialized Educational Services, which does business as The Crossroads School ("Crossroads"). In short, the O'Briens claimed that Crossroads wrongfully seized assets found in their children's bank accounts." The complaints were dismissed, and the O'Briens aver that the "sole question" on appeal

"relates to [the] seizure of [their] children['s] . . . bank accounts." We will affirm.[1]

I.

J.J. was a student at Crossroads for four years. The O'Briens, unhappy with the services being provided by Crossroads, enrolled him in a public school for the 1999-2000 academic year. They refused, however, to pay Crossroads the entire sum of tuition charged for the final year at Crossroads. Crossroads sued the O'Briens in Pennsylvania state court to recover the unpaid tuition. It prevailed, and the court entered judgment on February 5, 2002 for $15,134.00, the full amount of the outstanding tuition. The O'Briens appealed. The Pennsylvania Superior Court quashed the appeal, which it described as "rambling" and "largely incomprehensible."[2] (A70, 04-4278)

When they appealed, the O'Briens failed to post a bond to stay execution of the judgment. *See* Pa. R. Civ. P. 3121(a) (providing for a mandatory stay of execution, *inter alia*, "upon the entry of bond with the prothonotary, in the amount of plaintiff's judgment, including probable interests and costs, or in such lesser amount as the court may direct . . . "). Consequently, Crossroads executed on the

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[1] Our review of the District Court's grant of Crossroads' motions to dismiss is plenary. "In reviewing the motion to dismiss, we must accept as true all facts alleged in the complaint and view them in the light most favorable to" the O'Briens. *In re Merck & Co., Inc. Sec. Litig.*, 432 F.3d 261, 266 (3d Cir. 2005).

[2] Crossroads also represents that "[a]t least three other appeals to the Pennsylvania Superior Court by the O'Briens arising out of the same subject matter have been either affirmed or dismissed." (Appellee's Br. at 2 n.1.)

judgment, obtaining and serving three writs of attachment on bank accounts at the First Union National Bank on March 13, 2002. In response, the O'Briens filed a motion to vacate and set aside the attachment and levy in the Pennsylvania Court of Common Pleas, contending that they received improper notice and that assets of their children were seized, raising wholly state law grounds for relief. (A33-34) The court dismissed the motion, and the O'Briens appealed again without posting a bond. The Superior Court affirmed the dismissal. (A73, 04-4278)[3]

The O'Briens were not deterred. John J. O'Brien, III, filed a complaint in federal court on July 3, 2003, later amended, and Crossroads moved to dismiss the complaint on August 5, 2003. The District Court, observing that the complaint was "not a model of clarity," discerned that the "primary claim appear[ed] to be that the attachment of the minor Plaintiffs' bank accounts without prior notice violated their Due Process rights under the Fourteenth Amendment." (A7, 04-4278) O'Brien also "assert[ed] a number of state law grievances," (*id.*), ultimately requesting that the attachment and levy be set aside and the assets returned. The District Court did not need to reach the question of whether the children's assets were wrongfully attached, dismissing the case on alternative grounds; the claims were barred both by the *Rooker-Feldman* doctrine, as well as by res judicata.

Josephine O'Brien brought a separate suit in the District Court, "aris[ing] out of exactly the same circumstances . . . ," (A3, 04-4440), and claiming violations of the Fourteenth Amendment and the Fair Debt Collection

[3] The Pennsylvania Supreme Court declined to hear the case.

Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et. seq.* The District Court dismissed that action as well under *Rooker-Feldman*,[4] and warned counsel about the potential consequences of persisting to press legal claims arising out of these events. (A11, 04-4440) ("We caution Plaintiffs' counsel that in light of this decision and our earlier decision in *O'Brien v. Valley Forge Specialized Educ. Servs. Corp.*, . . . any future complaints regarding the subject matter of this litigation may very well run afoul of Fed. R. Civ. P. 11, warranting the imposition of sanctions.")

Again undeterred, the O'Briens appealed to this Court. The appeals were referred to the Appellate Mediation Program. A representative of that program inquired of the bank and received confirmation that the children's bank accounts were intact. The O'Briens concede in their brief that their children's "bank accounts had never been seized." (Appellants' Br. at 5.) Nonetheless, they press on, contending that the investigation revealed a seizure by Crossroads of $661.44 "which was in excess of the judgment debt the school had obtained in the sum of [$15, 134.00]." (*Id.*)

II.

We need not linger long over these appeals. The O'Briens do not challenge the District Court's *Rooker-Feldman* analysis nor its application of the doctrine of res judicata. The arguments have been waived. Moreover, the

[4] The District Court also dismissed the FDCPA claim "[b]ecause no relief could be granted under the FDCPA for any set of facts consistent with the allegations contained in Plaintiffs' complaint." (A9-10, 04-4440)

"sole question" on appeal, as the O'Briens and their counsel frame it, is the propriety of the seizure of the children's bank accounts. No such seizure occurred, as they now concede, requiring affirmance in any event.

As it was never raised in the District Court, the argument centering on the $661.44 is not before us. We also note that apparently the $15,134.00 is still owed, along with interest, to Crossroads. In short, in addition to not being preserved for appellate review, the claim is of dubious merit.[5]

III.

This litigation, and its "tortured history," (Appellee's Br. at 2), should have long since ended. The O'Briens and their counsel have not been deterred by the quashing of their initial state appeal by the Pennsylvania Superior Court, nor by the subsequent losses in the state forum, nor by the District Court's alternative grounds for dismissing their complaints and its reference to Rule 11, nor, remarkably, even by their own admission that the bank accounts "had never been seized," (Appellants' Br. at 5), the "sole question" presented on appeal. (*Id.* at 2.)

This persistence in pressing appellate arguments utterly lacking in merit calls to mind Federal Rule of Appellate Procedure 38. *See id.* ("If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages

[5] The O'Briens raise other arguments in a haphazard manner, none of which will be or need be addressed here.

and single or double costs to the appellee."). *Cf. Beam v. Bauer*, 383 F.3d 106, 109 (3d Cir. 2004) ("[D]espite many cues from us and the District Court that her cause was wholly meritless, Beam and her counsel have persisted before the District Court and again before us."). Crossroads seeks Rule 38 damages in their brief,[6] a request to which the O'Briens have not replied, but have not filed a separate motion. "We will leave it to [Crossroads] to determine whether they wish to petition for such an award." *Beam v. Bauer*, 88 Fed. Appx. 523, 526 n. 1 (3d Cir. 2004) (unpublished); *see Beam v. Bauer*, 383 F.3d 106, 110 (3d Cir. 2004) (awarding Rule 38 damages).

IV.

For the foregoing reasons, we will affirm the judgment of the District Court.

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[6] Crossroads contends that we have "the discretion to sanction a party for bringing a frivolous appeal." (Appellee's Br. at 14.) "Although often mistakenly referred to as both, an award under Rule 38 is neither a sanction nor a punishment . . . The rationale of Rule 38 is simply that when parties suffer pecuniary loss by paying attorney's fees to defend a valid judgment against a frivolous appeal, they are as entitled to be awarded damages as is a victim seeking compensation for any other financial loss incurred by the acts of a tortfeasor." *Beam v. Bauer*, 383 F.3d 106, 108 (3d Cir. 2004).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-4278

JOHN J. O'BRIEN, III, TRUSTEE ON BEHALF OF MINOR-PLAINTIFFS; JOHN JOSEPH O'BRIEN, IV; DANIELLE O'BRIEN; BRIANA O'BRIEN; SIMONE O'BRIEN,

Appellants

v.

VALLEY FORGE SPECIALIZED EDUCATION SERVICES d/b/a THE CROSSROADS SCHOOL
(D.C. Civil No. 03-cv-03984)

No. 04-4440

JOSEPHINE O'BRIEN, MOTHER AND PARENT ON BEHALF OF MINOR-PLAINTIFFS, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN AND JOHN JOSEPH O'BRIEN, IV,

Appellant

v.

VALLEY FORGE SPECIALIZED SERVICES CORPORATION doing business as THE CROSSROADS SCHOOL (D.C. Civil No. 03-cv-05695)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
District Judge: The Honorable R. Barclay Surrick

Submitted Under Third Circuit LAR 34.1(a)
March 30, 2006

Before: McKEE, BARRY and VAN ANTWERPEN,
Circuit Judges

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on March 30, 2006. After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgments of the District Court be and hereby are affirmed. Costs taxed against appellants. All in accordance with the Opinion of the Court.

ATTEST:

/s/ Marcia M. Waldron,
Clerk

Dated: April 6, 2006

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN J. O'BRIEN, III, Trustee on behalf of minor-plaintiffs, JOHN JOSEPH O'BRIEN IV, DANIELLE O'BRIEN, BRIANNA O'BRIEN and SIMONE O'BRIEN	:	CIVIL ACTION No. 03-CV-3984
v.	:	
VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a the Crossroads School	:	

SURRICK, J. **Filed OCTOBER 13, 2004.**

MEMORANDUM & ORDER

Presently before the Court is the Motion of Defendant Valley Forge Specialized Educational Services, d/b/a The Crossroads School, Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion to Dismiss") (Doc. No. 4). For the following reasons, Defendant's Motion will be granted.

I. BACKGROUND

A. Factual History

This case involves a dispute between John J. O'Brien, III ("Mr.O'Brien") and Valley Forge Specialized Educational Services, d/b/a The Crossroads School ("Crossroads" or "Defendant"), over unpaid tuition. Mr. O'Brien enrolled his son, John J. O'Brien, IV ("J.J."), at Crossroads, a private primary school, for four years. (Am. Compl. ¶ 16.) Mr. O'Brien eventually became dissatisfied with J.J.'s academic performance at Crossroads, and enrolled J.J. in a public school for the 1999-2000 academic year. (*Id.* ¶ 17.)

After removing J.J. from Crossroads, Mr. O'Brien refused to pay part of J.J.'s tuition for his final year at Crossroads. (*Id.*)

B. State Court Proceedings

Crossroads sued Mr. O'Brien and his wife for breach of contract in the Pennsylvania Court of Common Pleas of Chester County, Pennsylvania for the unpaid tuition. (*Id.* ¶ 18.) On June 22, 2003, after a bench trial, Judge Thomas G. Gavin ruled in Crossroads' favor, holding that the O'Briens had breached their contract with the school. *Valley Forge Specialized Educ. Servs. v. O'Brien,* No. 99-9565, slip op. at 1-2, 9 (Pa. Ct. Com. Pl. June 22, 2001). The court rejected the O'Briens' asserted defenses, finding that (1) the contract between the O'Briens and Crossroads was not invalid for failure of consideration, (2) Crossroads had not fraudulently induced the O'Briens to enter into the contract, and (3) Crossroads did not violate state statutes regarding the provision of visual and psychological services to students.[1] *Id.* at 3-8. The trial court entered a judgment in favor of Defendants for $15,134.00, the amount of the O'Briens' outstanding tuition payment.

The O'Briens filed post-trial motions, which the trial court failed to rule upon within 120 days. *Valley Forge Specialized Educ. Servs. v. O'Brien,* 828 A.2d 410 (Pa.

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[1] At the conclusion of trial, the O'Briens also claimed that Defendant was guilty of spoliation of evidence "by failing to produce notebooks containing summaries of conversations between parents and teachers." *Id.* at 8. The trial court found that the O'Briens had failed to establish that the notebooks were relevant to their case or that Defendant's failure to produce them was prejudicial in any way, and declined to impose sanctions. *Id.* at 8-9.

Super. Ct. 2003) (table). On February 5, 2002, pursuant to Pa. R. Civ. P. 227.4(b),[2] the county prothonotary entered judgment against the O'Briens. *Id.* The O'Briens then filed a notice of appeal with the Pennsylvania Superior Court. *Id.* Ultimately, this appeal was quashed.[3] However, because the O'Briens failed to file a *supersedeas* bond under Pa. R. Civ. P. 3121(a)(2),[4] Defendant proceeded to execute on its judgment. *Id.* On March 13, 2002, Defendant obtained and served three writs of attachment on bank accounts purportedly held by the O'Briens at First Union Bank ("First Union"). *Id.*

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[2] Pa. R. Civ. P. 227.4(b) allows a prothonotary to enter judgment upon a party's praecipe when the trial court has failed to rule on post-trial motions for 120 days.

[3] The Superior Court quashed this appeal on September 10, 2002, finding that the O'Briens' "rambling" and "largely incomprehensible" arguments precluded meaningful appellate review. *Valley Forge Specialized Educ. Servs. v. O'Brien,* 823 A.2d 145 (Pa. Super. Ct. 2002) (table).

[4] Pa. R. Civ. P. 3121(a) provides for a mandatory stay of execution of judgment in the following situations:

> (1) upon written direction of the plaintiff to the sheriff
>
> (2) upon the entry of bond with the prothonotary, by any person or party in interest, with security approved by the prothonotary, in the amount of plaintiff's judgment, including probable interests and costs, or in such lesser amount as the court may direct, naming the Commonwealth of Pennsylvania as obligee, and conditioned to pay the amount due within ninety (90) days of the entry of bond . . .
>
> (3) pending disposition of a third property claim filed by a third party
>
> (4) upon a showing of exemption or immunity of property from execution;
>
> (5) upon a showing of a right to stay under the provisions of an Act of Congress or any Act of assembly.

Pa. R. Civ. P. 3121(a).

On March 22, 2002, counsel for the O'Briens filed a motion with the trial court to vacate and set aside the attachments. (Doc. No. 5 Ex. E). They argued that the attachments were illegally placed on bank accounts held in trust for the O'Briens' children, and that the attachments also violated Pa. R. Civ. P. 3252 because Crossroads had not provided notice or a list of exceptions prior to execution. (*Id.* ¶¶ 3-4.) On May 6, 2002, the trial court denied the motion, ruling that the attachments did not "violate[ ] any law or rule of court." (Doc. No. 4 Ex. C.) In its order, the court permitted the O'Briens to stay execution of the writ if they posted a bond in the amount of the judgment, plus interests and costs, pursuant to Pa. R. Civ. P. 3121. (*Id.*) The O'Briens did not post the required bond, but they did file an appeal on May 14, 2002.

On March 25, 2003, the Superior Court affirmed the trial court's decision and declined to vacate the attachments. *Valley Forge Specialized Educ. Servs. v. O'Brien,* 828 A.2d 410 (Pa. Super. Ct. 2003) (table). The court held that the O'Briens failed to establish any of the grounds available under Pa. R. Civ. P. 3121 for a mandatory stay of execution of judgment, and that the trial court did not abuse its discretion by declining to grant a permissive stay during the appeal. *Id.* It also rejected the O'Briens' claim that inadequate notice had been provided under Pa. R. Civ. P. 3252, concluding that "since Appellants filed a motion to set aside execution, [they had] actually received notice that the funds were going to be attached." *Id.* Finally, the Superior Court declined to consider the O'Briens' constitutional challenge to Pa. R. Civ. P. 227.4(b) because the issue had not been raised at the trial court level. *Id.* The O'Briens then petitioned for a writ of *allocatur* to the Pennsylvania Supreme Court, which that court

denied on October 27, 2003.[5] *Valley Forge Specialized Educ. Servs. v. O'Brien,* 834 A.2d 1143 (Pa. 2003) (table).

C. Federal Litigation

On July 3, 2003, Mr. O'Brien filed an action in this Court as trustee on behalf of his four minor children, John Joseph O'Brien, IV, Danielle O'Brien, Briana O'Brien, and Simone O'Brien (collectively "Plaintiffs"). (Am. Compl. ¶¶ 1, 4-5, 7-15.) Although Plaintiffs' Complaint is not a model of clarity, their primary claim appears to be that the attachment of the minor Plaintiffs' bank accounts without prior notice violated their Due Process rights under the Fourteenth Amendment. (*Id.* ¶¶ 1, 3-4.) Plaintiffs assert a number of state law grievances, alleging that: (1) Defendant failed to comply with state procedural rules, specifically, Pa. R. Civ. P. 3252, related to the execution of judgments (*id.* ¶ 4); (2) Defendant failed to provide notice or a summary of exemptions prior to execution of the writs of attachment (*id.* ¶ 5); (3) Defendant failed to deliver a proper interrogatory under Pa. R. Civ. P. 3253 to First Union Bank along with the writs (*id.*); (4) the trial court wrongfully refused to vacate the writs of attachment executed against Plaintiffs (*id.* ¶ 7); (5) Pa. R. Civ. P. 227.4

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[5] There apparently has been other related litigation between the parties in Pennsylvania state courts, though the nature of that litigation is not clear from the parties' submissions. The O'Briens assert in their Amended Complaint that on Febrary [sic] 26, 2003, Judge S. Gerald Corso, Court of Common Pleas, Montgomery County, ordered the consolidation and transfer of three cases involving the O'Briens, their children, and the Crossroads School to the Court of Common Pleas, Chester County, and that this transfer violated Pennsylvania's rules regarding venue. (Am. Compl. ¶¶ 12-13; *see also id.* Exs. C, D.) In light of our disposition of this matter, we need not consider these proceedings.

violates the Pennsylvania constitution (*id.* ¶ 10-11); and (6) the trial court did not have proper jurisdiction over the Plaintiffs (*id.* ¶ 7). As a remedy, Plaintiffs request that this Court set aside the attachment and levy of the bank accounts, that Defendant return Plaintiffs' assets, including all applicable interests, costs, and attorney's fees, and award recovery in the amount of $50,000 for past payment of tuition over the preceding four years. (*Id.* ¶ 18) On July 28, 2003, the Plaintiffs filed an Amended Complaint, which added a claim for punitive damages against Defendant for deliberate wrongful conduct in seizing Plaintiffs' assets. (*Id.*)

On August 5, 2003, Defendant moved to dismiss the Amended Complaint. (Doc. No. 4.) Defendant argues that (1) Plaintiffs have failed to allege either a procedural or substantive Due Process claim under the Fourteenth Amendment and (2) Plaintiffs' claims violate the *Rooker-Feldman* doctrine because they seek to relitigate issues previously decided in state court. (*Id.*) On December 3, 2003, we directed the parties to submit supplemental briefing on whether the doctrines of collateral estoppel or res judicata barred any or all of Plaintiffs' claims. (Doc. No. 6.) Both parties filed briefs, and Defendant's Motion to Dismiss is now ripe for consideration.

II. STANDARD

When considering a Rule 12(b)(6) motion to dismiss, we must "accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." *Rocks v. City of Phila.*, 868 F.2d 644, 645 (3d Cir. 1989). The court may dismiss a complaint

only if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); *see also Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990) ("Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved."). When considering a motion to dismiss, we need not credit a plaintiff's "bald assertions" or "legal conclusions." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

"In determining whether a claim should be dismissed," a court generally "looks only to the facts alleged in the complaint and its attachments without reference to other parts of the record." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). The Third Circuit has recognized, however, that "'a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss into one for summary judgment.'" *Angstadt v. Midd-West Sch. Dist.*, 377 F.3d 338, 342 (3d Cir. 2004) (quoting *U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 388 (3d Cir. 2002)). Additionally, "a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Because the orders and opinions of the prior state court litigation are integral to Plaintiffs' claims in this case, we

will consider these documents in evaluating Defendant's Motion to Dismiss .[6]

III. DISCUSSION

A. *Rooker-Feldman*

Defendant's first argument is that Plaintiffs' claims are barred under the *Rooker-Feldman* doctrine. (Doc. No. 5.) They assert that because Plaintiffs' federal Due Process claim is "inextricably intertwined" with the prior state court litigation regarding the appropriate notice and procedure for attaching Plaintiffs' bank accounts, *Rooker-Feldman* prohibits relitigation of these issues in federal court. We agree.

1. The *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine, developed through two Supreme Court cases decided nearly sixty years apart, *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983), precludes litigants from using the lower federal courts to appeal unfavorable decisions from the state court system. *See Gulla v. N. Strabane Twp.,* 146 F.3d 168, 171 (3d Cir. 1998) ("[S]tate court litigants who have appealed an adverse judgment through the state system may seek review [only] in the United States Supreme Court; the lower federal courts may not sit in direct review of the decisions of a state tribunal."). The

[6] All of the relevant state court opinions, orders, and pleadings are attached either to the Amended Complaint or to Defendant's Motion to Dismiss.

basis for the *Rooker-Feldman* doctrine lies in 28 U.S.C. § 1257, which states in relevant part that "'final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court. . . .'" *Valenti v. Mitchell,* 962 F.2d 288, 296 (3d Cir. 1992) (quoting 28 U.S.C. § 1257 (2000)). Because Congress "has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not empower District Courts to review state court decisions." *Desi's Pizza, Inc. v. City of Wilkes-Barre,* 321 F.3d 411, 419 (3d Cir. 2003) (discussing *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 476 (1983)). Consequently, "[t]o ensure that Congress's intent to prevent the lower federal courts from sitting in direct review of the decisions of a state tribunal is given effect, the *Rooker-Feldman* doctrine prohibits District Courts from adjudicating actions in which the relief requested requires determining whether the state court's decision is wrong or voiding the state court's ruling." *Id.* (citation and internal quotations omitted).

Specifically, the *Rooker-Feldman* doctrine prevents a District Court from reviewing a claim in two circumstances. *Id.* First, a lower federal court is barred from reviewing claims that were "actually litigated" in state court. *Id.* Second, the court may not consider a claim that is "inextricably intertwined" with the prior state court action. *Id.* If the state court claims were either "actually litigated" or are "inextricably intertwined" with the current federal action, a District Court lacks jurisdiction over the federal claims, even if they were not previously raised in state court. *Parkview Assocs. P'ship v. City of Lebanon,* 225 F.3d 321, 327 (3d Cir. 2000); *see also* Adam McLain,

Note, *The* Rooker-Feldman *Doctrine: Toward a Workable Role,* 149 U. Pa. L. Rev. 1555, 1581 (2001) ("*Rooker-Feldman,* unlike res judicata, is a jurisdictional doctrine rather than an affirmative defense."). The Third Circuit has noted that "[o]rdinarily, it will be more difficult to demonstrate that a claim was 'actually litigated' than to show that the federal claim is 'inextricably intertwined' with the state court judgment. The former requires that the state court has considered and decided precisely the same claim that the plaintiff has presented in the federal court." *ITT Corp. v. Intelnet Int'l Corp.,* 366 F.3d 205, 210-11 n. 8 (3d Cir. 2004) (quoting *Desi's Pizza, Inc.,* 321 F.3d at 422).

2. Prior Decision on the Merits

As a threshold matter, for a state court's decision to be "inextricably intertwined" with the plaintiff's current federal claims, the state court decision must have been "on the merits." *Id.* at 212. An "'on the merits' adjudication" has traditionally been defined as one that "'passes directly on the substance of a particular claim.'" *Semtek Int'l Inc. v. Lockheed Martin Corp.,* 531 U.S. 497, 501-02 (2001) (quoting Restatement (Second) of Judgments § 19 cmt. a (1982)) (internal brackets omitted). Consequently, we must determine whether the state court decided on the substance of the O'Briens' claims. *ITT Corp.* 366 F.3d at 211-12.

In the state court litigation, Defendant sued the O'Briens in the Court of Common Pleas of Chester County for unpaid tuition under a breach of contract theory. *Valley Forge Specialized Educ. Servs.,* No. 99-9565, slip op. at 1-2. After the trial court rendered a decision in favor of the

plaintiffs, Crossroads proceeded to execute on the judgments "against assets held by [the O'Briens] at First Union Bank." *Valley Forge Specialized Educ. Servs.,* 828 A.2d 410, slip op. at 2 (table). In response, the O'Briens filed a motion to set aside the attachment of the bank accounts assets because Defendant's notice and levy and attachment allegedly were in violation of Pennsylvania law. (Am. Compl. Ex. A.) The Chester County Court of Common Pleas denied the motion after briefing and oral argument, holding that the O'Briens' claims were without merit because "they have failed to establish that the challenged attachment violated any law or rule of court." *Valley Forge Specialized Educ. Servs. v. O'Brien,* No. 99-9565 (Pa. Ct. Com. Pl. May 6, 2002) (order denying motion to vacate and set aside attachment). The O'Briens appealed this decision to the Superior Court of Pennsylvania, asserting that the execution of the writs should have been stayed because notice was improper and the writs illegally attached the O'Briens' children's bank accounts. *Valley Forge Specialized Educ. Servs.,* 828 A.2d 410, slip op. at 2 (table). The Superior Court denied the appeal, holding that (1) the trial court did not abuse its discretion in refusing to stay the execution of the attachments under Pa. R. Civ. P. 3121 (*id.* slip op. at 3-6), (2) the O'Briens "actually received notice that the funds were going to be attached" (*id.* slip op. at 6), and (3) the O'Briens failed to satisfy their burden to demonstrate that the notice was improper or inadequate under the Pennsylvania Rules of Civil Procedure (*id.*).

Based on this record, we conclude that the trial court and the Superior Court resolved the state court claims on the merits. The trial court concluded after briefing and argument that the motion to vacate was without legal

merit, holding that the execution of the writs of attachment did not "violate[] any law or rule of court. *Valley Forge Specialized Educ. Servs.*, No. 99-9565 (order denying motion to vacate and set aside attachment). Likewise, the Superior Court rejected the O'Briens' argument that Defendant had not provided adequate notice, finding that the O'Briens had received actual notice prior to execution and that the notice did not violate Pennsylvania's rules of civil procedure.

3. State Court Decision "Inextricably Intertwined" With the Present Litigation

We must now determine whether Plaintiffs' current action is "inextricably intertwined" with the state court litigation. A claim is inextricably intertwined when, in order to grant relief, the federal court would have to (1) "'determine that the state court judgment was erroneously entered'" or (2) "'take action that would render the state court's judgment ineffectual.'" *Desi's Pizza, Inc.*, 321 F.3d at 420 (quoting *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996)) (brackets omitted).

Here, Plaintiffs' sole federal claim is that Defendant's execution of the writ of attachment violated Plaintiffs' Due Process rights. (Am. Compl. ¶ 1.) To determine this issue, we first would have to determine whether Defendant had afforded Plaintiffs adequate procedural protections to protect against a mistaken deprivation of their property. *See N. Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 605-06, 609 (1975) (holding the garnishment of a bank account unconstitutional under the Due Process Clause for failure to provide prior notice or a hearing); *Fuentes v.*

Shevin, 407 U.S. 67, 90 n. 21 (1972) (noting that under the Due Process Clause, "*some* form of notice and hearing – formal or informal – is required before deprivation of a property interest"); *Snidach v. Family Fin. Corp.,* 395 U.S. 337, 341-42 (1969) (holding that notice and a prior hearing were required under the Due Process Clause before garnishing an individual's wages); *see also United States v. James Daniel Good Real Prop.,* 510 U.S. 43, 53 (1993) ("The right to prior notice and a hearing is central to the Constitution's command of due process."). A ruling in Plaintiffs' favor would necessarily require this Court to declare the Chester County Court of Common Pleas and the Superior Court of Pennsylvania erred in holding that notice was procedurally proper. A decision for the Plaintiffs would also require us to "render the state court's judgment ineffectual" by vacating the attachments against Plaintiffs' bank accounts and order the restoration of all funds taken from them. Thus, we conclude that Plaintiffs' due process claim is "inextricably intertwined" with the O'Briens' state court claims.

4. Privity

In response to Defendant's *Rooker-Feldman* claim, Plaintiffs argues that because the O'Brien children were not parties to the state court action, they cannot be precluded from bringing a separate due process claim in federal court. (Doc. No. 5.) The *Rooker-Feldman* doctrine, however, binds not only the parties to the state court suit, but also their privities. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 364 F.3d 102, 105 (3d Cir. 2004); *see also ITT Corp.,* 366 F.3d at 216 ("[C]laims and issues decided against an entity bind also its parties in privity for *Rooker-Feldman* purposes.").

Privity "refers to a cluster of relationships . . . under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." Restatement (Second) of Judgments, ch. 1 (1982). Pennsylvania courts have defined parties in privity as those that have "mutual or successive relationships to the same right of property," or have "such an identification of interest of one person with another as to represent the same legal right."[7] *Ammon v. McCloskey,* 655 A.2d 549, 554 (Pa. Super. Ct. 1995); *see also Bergdoll v. Commonwealth,* No. 706 M.D. 2003, 2004 Pa. Commw. LEXIS 698, at *23 n. 4 (Pa. Commw. Ct. Sept. 16, 2004). The Third Circuit has described privity as "'a word used to say that the relationship between one who is a party on the record and another is close enough to include that other within the [scope of] res judicata.'" *EEOC v. United States Steel Corp.,* 921 F.2d 489, 493 (3d Cir. 1990) (quoting *Bruszewski v. United States,* 181 F.2d 419, 423 (3d Cir. 1950)); *see also First Options v. Kaplan,* 913 F. Supp. 377, 384 (E.D. Pa. 1996) ("The Third Circuit has long recognized that privity is a legal conclusion; the privity inquiry should be flexible enough to acknowledge the realities of parties' relationships.")

We conclude that Plaintiffs are in privity with the state court litigants. "One relationship long held to fall within the concept of privity is that between a nonparty

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[7] Because "Pennsylvania privity law is . . . consistent with our federal privity law," *Hitchens v. County of Montgomery,* No. 03-1858, 2004 U.S. App. LEXIS 8231, at *16 n. 6 (3d Cir. Apr. 26, 2004), we use both interchangeably in our analysis, and conclude that the result would be the same regardless of which law we applied. *See First Options v. Kaplan,* 913 F. Supp. 377, 384 (E.D. Pa. 1996) (finding that privity existed under both Pennsylvania and federal law).

and party who acts as the nonparty's representative." *United States Steel Corp.*, 921 F.2d at 493 (citing *Martin v. Wilks*, 490 U.S. 755, 762 n. 2 (1989)); *see also* Restatement (Second) of Judgments § 41(d) (1982) ("A legal representative is found where a party is . . . . [t]he executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary."). The legal relationship necessary for a finding of privity can be either "an express or an implied relationship," *Pony Express Records, Inc. v. Springsteen*, 163 F. Supp. 2d. 465, 474 (D.N.J. 2001), and may include a "virtual representative of the non-party." *Collins*, 34 F.3d at 176. Mr. O'Brien has acted as his children's representatives in both the state court action and in this case, defending their property interests in their bank accounts. In the state court action, Mr. O'Brien acted as the legal representative of his children's interests, filing motions on their behalf to vacate the attachments on their bank accounts. (Am. Compl. Ex. A.) Mr. O'Brien then pursued this issue on appeal to the Pennsylvania Superior Court, where he again argued that the attachment on his children's bank accounts should be set aside. *Valley Forge Specialized Educ. Servs.*, 828 A.2d 410, slip op. at 2-3 (table). In this action, Mr. O'Brien is explicitly acting as trustee on behalf of his children to recover the funds taken from their accounts. (Doc. Nos. 1, 3, 5.) Therefore, we conclude that Plaintiffs are in privity with the state court defendants.

B. Res Judicata

In its Motion to Dismiss, Defendant did not discuss any grounds other than *Rooker-Feldman* that might warrant dismissal of Plaintiffs' claims under Rule 12(b)(6). Defendant's Motion did note, however, that Plaintiffs'

claims had been previously litigated in Pennsylvania state courts, and that "those cases have been concluded unfavorably for Plaintiffs." (Doc. No. 4 at 2-3.) Because "[t]he benefits of precluding relitigation of issues finally decided run not only to the litigants, but also to the judicial system," *Studio Art Theater of Evansville, Inc. v. City of Evansville,* 76 F.3d 128, 130 (7th Cir. 1996), we ordered supplemental briefing on whether the issues of collateral estoppel or res judicata would bar any or all of Plaintiffs' claims in this case. (Doc. No. 6.) Both Plaintiffs and Defendants submitted supplemental briefs (Docs. No. 7, 8), and we conclude that Plaintiffs' claims are also barred under the doctrine of res judicata.

Res judicata, also known as claim preclusion, "'is a doctrine by which a former adjudication bars a later action on all or part of the claim which was the subject of the first action.'" *R/S Fin. Corp. v. Kovalchick,* 716 A.2d 1228, 1230 (Pa. 1998) (quoting *Balent v. City of Wilkes-Barre,* 669 A.2d 309, 313 (Pa. Super. Ct. 1995)). However, "'[r]es judicata applies not only to claims actually litigated, but also to claims *which could have been litigated* during the first proceeding if they were part of the same cause of action.'" *Id.* (quoting *Balent,* 669 A.2d at 313) (emphasis added); *see also* 18 James Wm. Moore et al., Moore's Federal Practice ¶ 131.10 (3d ed. 2000) ("A claim, for purposes of claim preclusion, includes not only those matters actually addressed by the prior judgment, but those matters which could have been raised in that action. . . . Thus, matters that arise from the same facts, occurrence, or transactions that were the basis of a prior action may be within the scope of claim preclusion by that action."). If res judicata applies, "'[a]ny final, valid judgment on the merits . . . precludes any future suit between the parties or their

privies on the same cause of action.'" *R/S Fin. Corp.*, 716 A.2d at 1230 (quoting *Balent*, 669 A.2d at 313).

"The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings 'shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.'" *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (quoting 28 U.S.C. § 1738 (2000)). Because the prior litigation occurred in the Pennsylvania state courts, we will apply Pennsylvania law to determine whether res judicata precludes Plaintiffs' suit in this Court. *See, e.g., Urrutia v. Harrisburg County Police Dep't*, 91 F.3d 451, 461 (3d Cir. 1996) (applying Pennsylvania's res judicata standard); *Allegheny Int'l v. Allegheny Ludlum Steel Corp.*, 40 F.3d 1416, 1429 (3d Cir. 1994) (same).

"Under Pennsylvania law, the doctrine of res judicata holds that 'a final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the parties or their privies, on the same cause of action.'" *Allegheny Int'l*, 40 F.3d at 1429 (quoting *Keystone Bldg. Corp. v. Lincoln Sav. & Loan Ass'n*, 360 A.2d 191, 194 (Pa. 1976)). Res judicata applies when there is (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or being sued in the two cases. *In re Iulo*, 766 A.2d 355, 337 (Pa. 2001) (citing *Safeguard Mut. Ins. Co. v. Williams*, 345 A.2d 664, 668 (Pa. 1975)); *see also Allegheny Int'l*, 40 F.3d at 1429 (same). "Although consistent in demanding satisfaction of these four criteria, the [Pennsylvania] courts

have avoided mere technical adherence to mechanical principles." *Gregory v. Chehi,* 843 F.2d 111, 116 (3d Cir. 1988). Notably, a claim that res judicata applies "will 'not be defeated by minor differences of form, parties or allegations' where the 'controlling issues have been resolved in a prior proceeding in which the present parties had an opportunity to appear and assert their rights.'" *Jett v. Beech Interplex, Inc.,* No. 02-9131, 2004 WL 1588230, at *2 (E.D. Pa. July 15, 2004) (quoting *Helmig v. Rockwell Mfg. Co.,* 131 A.2d 622, 627 (Pa. 1957)).

1. Identity of Issues

The first factor to consider is the identity of issues raised in the cases. *Gregory,* 843 F.2d at 116 (citing *Duquesne Slag Prods. Co. v. Lench,* 415 A.2d 53, 56 (1980)). When the "same occurrence underlies both suits," this requirement is met. *Id.* Here, the operative facts and the subject matter of the action – the validity of the execution of the writs of attachment – are identical to the prior state court proceedings.

2. Identity of Causes of Action

The second element is the likeness of the causes of actions in the state and federal proceedings. This factor does not require the claims in the cases to be identical; rather, "'identity of causes of action exist when, in both the prior and the subsequent proceedings the subject matter and the ultimate issues are the same. . . .'" *Jett,* 2004 WL 1588230, at *3 (quoting *Patel v. Workmen's Comp. Appeal Bd.,* 488 A.2d 1177, 1179 (Pa. Commw. Ct. 1985)); *see also Gregory,* 843 F.2d at 117 ("'A single cause of action may comprise claims under a number of different

statutory and common law grounds.'" (quoting *Davis v. U.S. Steel Supply,* 688 F.2d 166, 171 (3d Cir. 1980))). Factors that the Third Circuit has held are relevant to this determination are: "'(1) whether the acts complained of and the demand for relief are the same . . . ; (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same . . . ; and (4) whether the material facts alleged are the same.'" *O'Leary v. Liberty Mut. Ins. Co.,* 923 F.2d 1062 (3d Cir. 1991) (quoting *United States v. Athlone Indus., Inc.,* 746 F.2d 977, 984 (3d Cir. 1984)). Here, factors (1), (3) and (4) are identical to the state court litigation. The only difference is that Plaintiffs appear to have simply tacked a procedural Due Process label on to their plethora of state law procedural challenges to the execution of the writs of attachment. Because this issue is closely related to – in fact, we found it to be "inextricably intertwined" with – Plaintiffs' state court litigation regarding notice, it should have been litigated in the state court action. *See Patel,* 488 A.2d at 1179 ("'Res judicata applies not only to matters which were actually litigated, but also to those matters which should have been litigated.'" (quoting *Armco Steel Corp. v. Workmen's Comp. Appeal Bd.,* 431 A.2d 363, 365 (Pa. Commw. Ct. 1981))). Consequently, we find that this factor is also satisfied.

3. Identity of the Parties

The third factor is whether there is "identity of the parties" between the two suits. Under Pennsylvania law, identity exists when parties involved in the prior action are in privity with parties in the current litigation. *See Day v. Volkswagenwerk Aktiengesellschaft,* 464 A.2d 1313, 1317 (Pa. Super. Ct. 1983) ("'The doctrine of res judicata

applies to and is binding, not only on actual parties to the litigation, but also to those who are in privity with them. A final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or *their privies* on the same cause of action.'" (quoting *Stevenson v. Silverman,* 208 A.2d 786, 788 (Pa. 1965)); *see also Jett,* 2004 WL 1588230, at *4; *Yates v. City of Phila.,* No. 89-7884, 1991 U.S. Dist. LEXIS 13075, at *12 (E.D. Pa. Sept. 19, 1991). As described above, because plaintiffs in the state court action (the O'Briens) acted as the *de facto* legal representatives of Plaintiffs in this case, privity exists between the parties.

4. Identity of Capacity of the Parties

The final factor is whether the parties in the two actions are suing, or being sued, in the same capacity. The only difference in capacities here is that Mr. O'Brien, who was a defendant in the state court action, is acting as the legal representative and trustee on behalf of his minor children. Because privity exists between these parties, as described above, the capacity of the parties is similar enough to satisfy this requirement.

IV. CONCLUSION

Because this Court lacks jurisdiction to decide Plaintiffs' claims under *Rooker-Feldman,* Plaintiff's Amended Complaint will be dismissed. In addition, based on the doctrine of res judicata, Plaintiffs are prohibited from continuing with the current lawsuit. Under the circumstances,

we will grant Defendant's Rule 12(b)(6) Motion to Dismiss on all claims.

An appropriate Order follows.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN J. O'BRIEN, III, TRUSTEE on behalf of minor-plaintiffs, JOHN JOSEPH O'BRIEN IV, DANIELLE O'BRIEN, BRIANA O'BRIEN and SIMONE O'BRIEN v. VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL	CIVIL ACTION No. 03-CV-3984

ORDER

AND NOW, this 13th day of October, 2004, upon consideration of the Motion of Defendant Valley Forge Specialized Educational Services d/b/a The Crossroads School Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 4), and all papers filed in support thereof and opposition thereto, it is ORDERED that Plaintiffs' Amended Complaint is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
R. Barclay Surrick, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPHINE O'BRIEN, mother and parent on behalf of minor-plaintiffs, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN and JOHN JOSEPH O'BRIEN, IV	:	CIVIL ACTION NO. 03-CV-5695
v.	:	
VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL	:	

SURRICK, J. **(Filed NOVEMBER 10, 2004)**

MEMORANDUM & ORDER

Presently before the Court is the Motion of Defendant Valley Forge Specialized Educational Services, d/b/a The Crossroads School, Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 2). For the following reasons, Defendant's Motion will be granted.

I. BACKGROUND

This action arises out of exactly the same circumstances as the case of *O'Brien v. Valley Forge Specialized Educ. Servs. Corp.*, No. 03-CV-3984, a case recently decided by this Court.[1] John J. O'Brien III and Josephine O'Brien (collectively "the O'Briens") enrolled their son,

[1] On October 13, 2004, we filed a Memorandum and Order dismissing Civil Action No. 03-cv-3984. The facts and the law recited in that Memorandum are incorporated herein.

John J. O'Brien, IV, at The Crossroads School ("Crossroads" or "Defendant"), a private primary school. (Compl. ¶¶ 1-2.) In 1999, the O'Briens became dissatisfied with their son's academic performance at Crossroads, placed him in a public school, and refused to pay the outstanding tuition to Crossroads. (*Id.*) In response, Crossroads sued the O'Briens for breach of contract in the Court of Common Pleas of Chester County and was awarded a judgment in the amount of $15,134.00, the sum of the unpaid tuition. *Valley Forge Specialized Educ. Servs. v. O'Brien,* No. 99-9565, slip op. at 1-2, 9 (Pa. Ct. Com. Pl. June 22, 2001).[2] Crossroads proceeded to execute on its judgment and attached bank accounts purportedly held by the O'Briens. (Compl. ¶¶ 1-6.) The O'Briens then filed a motion seeking to vacate the attachments, arguing that they were illegally executed on bank accounts that were being held in trust for the O'Briens' children, who were not parties to the litigation. *Valley Forge Specialized Educ. Servs. v. O'Brien,* 828 A.2d 410 (Pa. Super. Ct. 2003) (table). The trial court denied the O'Briens motion to vacate the attachments. The Superior Court of Pennsylvania affirmed. *Id.*

John J. O'Brien III then brought the aforementioned Civil Action No. 03-cv-3934, which we dismissed. *O'Brien v. Valley Forge Specialized Educ. Servs.,* No. 03-CV-3984, 2004 WL 2316425 (E.D. Pa. Oct. 13, 2004). Josephine O'Brien now brings this action against Crossroads on

[2] The O'Briens filed an appeal from this decision. The appeal was quashed by the Pennsylvania Superior Court on September 10, 2002. That court found that the "rambling" and "largely incomprehensible" arguments precluded meaningful appellate review. *Valley Forge Specialized Educ. Servs. v. O'Brien,* 823 A.2d 145 (Pa. Super. Ct. 2002) (table).

behalf of her four minor children, Simone O'Brien, Briana O'Brien, Danielle O'Brien, and John Joseph O'Brien, IV (collectively "Plaintiffs"). Although Plaintiffs' Complaint is not a model of clarity, it appears to allege two claims: (1) that the attachment of the O'Briens' children's bank accounts violated their Due Process rights under the Fourteenth Amendment, and (2) that the process used to collect the O'Briens' unpaid tuition violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* (Compl. ¶¶ 3, 6, 14.) Defendant responded by filing a Rule 12(b)(6) motion to dismiss, arguing that Plaintiffs' claims violate the *Rooker-Feldman* doctrine because they seek to relitigate issues previously decided in state court. (Doc. No. 2.)

II. STANDARD

When considering a Rule 12(b)(6) motion to dismiss, we must "accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." *Rocks v. City of Philadelphia,* 868 F.2d 644, 645 (3d Cir. 1989). The court may dismiss a complaint only if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984)). When considering a motion to dismiss, we need not credit a plaintiff's "bald assertions" or "legal conclusions." *Morse v. Lower Merion Sch. Dist.,* 132 F.3d 902, 906 (3d Cir. 1997).

III. DISCUSSION

A. Due Process Claim

Defendant first argues that Plaintiffs' federal due process claims are prohibited under the *Rooker-Feldman* doctrine. (Doc. No. 2.) We agree. The *Rooker-Feldman* doctrine bars a lower federal court from reviewing claims that were either "actually litigated" in state court or are "inextricably intertwined" with the prior state court action. *Desi's Pizza, Inc. v. City of Wilkes-Barre,* 321 F.3d 411, 419 (3d Cir. 2003). For the reasons discussed in our Memorandum and Order in Civil Action No. 03-cv-3984, we conclude that Plaintiffs' federal due process claims are "inextricably intertwined" with the prior state court action. *O'Brien,* 2004 WL 2316425, at *3-7. The only remaining issue is whether the Plaintiffs in this case – Mrs. O'Brien, acting on behalf of her four minor children – are in privity with defendants in the state court action.

The *Rooker-Feldman* binds not only the parties to the prior state court suit, but also their privities. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 364 F.3d 102, 105 (3d Cir. 2004); *see also ITT Corp.,* 366 F.3d at 216 ("[C]laims and issues decided against an entity bind also its parties in privity for *Rooker-Feldman* purposes."). Privity "refers to a cluster of relationships . . . under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." Restatement (Second) of Judgments, ch. 1 (1982). Pennsylvania courts have defined parties in privity as those that have "mutual or successive relationships to the same right of property," or have "such an identification of interest of one person with another as to represent the same legal right." *Ammon v. McCloskey,* 655 A.2d 549, 554 (Pa. Super. Ct. 1995); *see also Bergdoll v. Commonwealth,*

No. 706 M.D. 2003, 2004 Pa. Commw. LEXIS 698, at *23 n.4 (Pa. Commw. Ct. Sept. 16, 2004).

We are satisfied that Plaintiffs are in privity with the Defendants in the state court litigation. "One relationship long held to fall within the concept of privity is that between a nonparty and party who acts as the nonparty's representative." *United States Steel Corp.,* 921 F.2d at 493 (citing *Martin v. Wilks,* 490 U.S. 755, 762 n.2 (1989)); *see also* Restatement (Second) of Judgments § 41(d) (1982) ("A legal representative is found where a party is. . . . [t]he executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary."). Here, Mrs. O'Brien is acting as her children's representatives, defending their property interests in their bank accounts. In the state court action, Mrs. O'Brien played a similar role, where she and her husband, as named defendants, acted as the legal representative of her children's interests, filing motions on their behalf in the Court of Common Pleas and the Superior Court seeking to vacate the attachments on their children's bank accounts. *O'Brien,* 2004 WL 2316425, at *7. Clearly, we are prohibited from hearing this matter under *Rooker-Feldman.*

B. FDCPA Claim

We must also dismiss Plaintiffs' FDCPA claim because no relief could be granted under the FDPCA based on the facts alleged. The purpose of a Rule 12(b)(6) is to test the legal sufficiency of a complaint. *Winterburg v. CNA Ins. Co.,* 868 F.Supp. 713, 718 (E.D. Pa. 1994), *aff'd,* 72 F.3d 318 (3d Cir. 1995). A court should not dismiss a case for failure to state a claim "'unless it appears beyond doubt

that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief.'" *Pryor v. NCAA*, 288 F.3d 548, 559 (3d Cir. 2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *see also Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998) ("A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations."). "In evaluating the propriety of the dismissal, we accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002).

The FDCPA "prohibits 'debt collector[s]' from making false or misleading representations and from engaging in various abusive and unfair practices" in the collection of debts.[3] *Heintz v. Jenkins*, 514 U.S. 291, 292 (1995). Under the statute, a "debt collector" is defined as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6) (2000). There are several enumerated exceptions to this

[3] For example, debt collection practices prohibited by the FDCPA include the use of violence, obscenity, or repeated annoying phone calls, 15 U.S.C. § 1692d (2000), false representations regarding "the character, amount, or legal status of any debt," *id.* § 1692e(2)(A), and other "unfair or unconscionable means to collect or attempt to collect" debt, *id.* § 1692f.

definition. One exception exempts from the Act "any person collecting or attempting to collect any debt owed or due another to the extent such activity . . . concerns a debt which was originated by such person." *Id.* § 1692a(6)(F).

Plaintiffs state in their Complaint that Mr. and Mrs. O'Brien are subject to a judgment for payment of outstanding tuition debt to Defendant in the amount of $15,134.00. (Compl. ¶ 1.) Plaintiffs further allege that Defendant is the party attempting to collect the outstanding tuition debt, and that it has improperly used formal legal processes – namely, obtaining and executing writs of attachments – to collect the unpaid debt. (*Id.* ¶¶ 3, 6-7.) Assuming that these allegations are true, as we must, Plaintiff cannot recover under the FDCPA for two reasons. First, the FDPCA applies only to "debt collectors," which the statute describes as any person or business where "the *principal purpose* of which is the collection of any debts, or who *regularly* collects or attempts to collect debts . . . due or asserted to be owned or due *another.*" 15 U.S.C. § 1692a(6) (2000) (emphases added); *see also* S. Rep. No. 95-382, at 3 (1977) ("[T]he primary persons intended to be covered [by the FDCPA] are independent debt collectors."), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1697. Plaintiff does not allege that the principle purpose of the Defendant, a private primary school, is the collecting of debts, or that the school regularly engages in collecting debts owed to another party. Indeed, we wonder how any private school which collects its own tuition payments could fall within the scope of the FDCPA. *See Howard v. Albert Magnus College,* No. 04-CV-784, 2004 U.S. Dist. LEXIS 17847, at *6-7 (D. Conn. Sept. 7, 2004) (dismissing FDCPA claim against private college because it did not qualify a "debt collector").

Second, as mentioned above, the FDCPA specifically exempts parties who "collect[] or attempt[] to collect any debt owed or due another to the extent such activity . . . concerns a debt which was originated by such person." 15 U.S.C. § 1692a(6)(F) (2000). Consequently, a party that is attempting to collect debts owed to itself, and not to another entity or third party, is not subject to liability under the FDCPA. *See, e.g., Montgomery v. Huntington Bank,* 346 F.3d 693, 699 (6th Cir. 2003) (holding that a bank which repossessed an automobile that was collateral for that bank's loan was exempted from the statutory definition of a debt collector); *Flamm v. Sarner & Assocs., P.C.,* No. 02-4302, 2002 U.S. Dist. LEXIS 22255, at *9 (E.D. Pa. Nov. 6, 2002) ("Generally the FDCPA does not govern the activities of a [party] attempting to collect on debts owed directly to themselves."); *Pressman v. Southeastern Fin. Group,* No. 94-5244, 1995 U.S. Dist. LEXIS 17961, at *8 (E.D. Pa. Nov. 19, 1995) ("Creditors collecting their own debts are not covered by the [FDCPA]."). Defendant here was only trying to collect tuition payments owed to it, not to another party. Clearly Defendant falls under this exemption. Because no relief could be granted under the FDCPA for any set of facts consistent with the allegations contained in Plaintiffs' complaint, Plaintiffs' FDCPA claim must be dismissed.

Additionally, Plaintiffs' FDCPA claim must be dismissed under the *Rooker-Feldman* doctrine. As mentioned above, *Rooker-Feldman* bars a lower federal court from reviewing claims that were either "actually litigated" in state court or are "inextricably intertwined" with the prior state court action. *Desi's Pizza, Inc.,* 321 F.3d at 419. A claim is inextricably intertwined when, in order to grant relief, the federal court would have to (1) " 'determine that

the state court judgment was erroneously entered'" or (2) "'take action that would render the state court's judgment ineffectual.'" *ITT Corp. v. Intelnet Int'l Corp.*, 366 F.3d 205, 211 (3d Cir. 2004) (quoting *Desi's Pizza, Inc.*, 321 F.3d at 420). If the relief sought by Plaintiff in this Court would have the effect of "undo[ing] or prevent[ing] the enforcement of the state court's order," it would be inextricably intertwined because it would require us to render the state court's judgment ineffectual. *Desi's Pizza, Inc.*, 321 F.3d at 422; *see also id.* ("'If the proposed [relief] were granted, the federal court would effectively reverse the state court judgment, and thus review a final judgment of a state court in judicial proceedings, contrary to *Rooker-Feldman*,'" (quoting *Stern v. Nix*, 840 F.2d 208, 212 (3d Cir. 1988)) (internal quotations and brackets omitted)).

Here, Plaintiffs allege that Defendant's execution of the writs of attachment on the O'Briens' children's bank accounts violated the FDCPA. *See* Compl. ¶ 3 (stating that Defendant's execution of the attachments violated the FDCPA because they were made "without lawful notice" and did not "compl[y] with appropriate procedural rules"); *id.* ¶¶ 4, 6, 8-12, 14 (asserting various other procedural defects with respect to the execution of the attachments and arguing that they collectively violated the FDCPA). As a remedy, Plaintiffs seek to have this Court set aside the procedurally defective attachments and order restitution and recovery of all seized funds. (*Id.* at unnumbered pp. 5-6.) Certainly, the FDCPA authorizes a successful plaintiff to "recover 'any actual damages sustained' as a result of the debt collector's violation of the FDCPA." *Weiss v. Regal Collections*, 385 F.3d 337, 340 (3d Cir. 2004) (quoting 15

U.S.C. §§ 1692k(a)(1) (2000)).[4] However, such a remedy would require us to "effectively reverse the state court judgment." *Desi's Pizza, Inc.*, 321 F.3d at 422. It would compel Defendant to return all funds seized from the attached bank accounts. This would have the effect of rendering the state court's orders ineffectual. Moreover, virtually all of the conduct that Plaintiffs contend violates the FDCPA involves the allegedly improper state court rulings and execution of the writs of attachment. (Compl. ¶¶ 4, 6, 8-12, 14.) Under Plaintiffs' FDCPA theory, in order to grant relief, we would be required to find that the state court erred in determining that the execution of the attachments was proper. Obviously, Plaintiffs' FDCPA claim is inextricably intertwined with the prior state court litigation and thus is barred under the *Rooker-Feldman* doctrine.[5]

An appropriate Order follows.

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[4] A successful plaintiff in an FDCPA action can also recover statutory damages up to $1000 for each violation, attorney's fees, and costs. *Weiss v. Regal Collections*, 385 F.3d 337, 340 (3d Cir. 2004) (discussing 15 U.S.C. §§ 1692k(a)(2)(A), (3) (2000)). Plaintiffs, however, do not request this relief in their Complaint.

[5] We caution Plaintiffs' counsel that in light of this decision and our earlier decision in *O'Brien v. Valley Forge Specialized Educ. Servs. Corp.*, No. 03-CV-3984, 2004 WL 2316425 (E.D. Pa. Oct. 13, 2004), any future complaints regarding the subject matter of this litigation may very well run afoul of Fed. R. Civ. P. 11, warranting the imposition of sanctions.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPHINE O'BRIEN, mother and parent on behalf of minor-plaintiffs, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN and JOHN JOSEPH O'BRIEN, IV	:	CIVIL ACTION NO. 03-CV-5695
v.	:	
VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL	:	

ORDER

AND NOW, this 10th day of November, 2004, upon consideration of the Motion of Defendant Valley Forge Specialized Educational Services d/b/a The Crossroads School Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 2), and all papers filed in support thereof and opposition thereto, it is ORDERED that Plaintiffs' Complaint is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
R. Barclay Surrick, Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-4278

JOHN J. O'BRIEN, III, TRUSTEE ON BEHALF OF MINOR-PLAINTIFFS; JOHN JOSEPH O'BRIEN, IV; DANIELLE O'BRIEN; BRIANA O'BRIEN; SIMONE O'BRIEN,

Appellants

v.

VALLEY FORGE SPECIALIZED EDUCATION SERVICES d/b/a THE CROSSROADS SCHOOL
(D.C. Civil No. 03-cv-03984)

No. 04-4440

JOSEPHINE O'BRIEN, MOTHER AND PARENT ON BEHALF OF MINOR-PLAINTIFFS, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN AND JOHN JOSEPH O'BRIEN, IV,

Appellant

v.

VALLEY FORGE SPECIALIZED SERVICES CORPORATION doing business as THE CROSSROADS SCHOOL
(D.C. Civil No. 03-cv-05695)

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA
District Judge: The Honorable R. Barclay Surrick

Present: SCIRICA, *Chief Judge,*
SLOVITER, McKEE, RENDELL, BARRY, AMBRO,
FUENTES, SMITH, FISHER, VAN ANTWERPEN,
and CHAGARES, *Circuit Judges*

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING *EN BANC*

The petition for rehearing en banc filed by Appellants having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petitions for rehearing en banc are DENIED.

BY THE COURT:

/s/ **Maryanne Trump Barry**
Circuit Judge

Dated: August 10, 2006

CH/cc: John J. O'Brien, Esq.
Guy A. Donatelli, Esq.
Susan C. Mangold, Esq.